

Rural Utilities Service, USDA

§ 1781.17

(d) Options and appraisals related to the purchase of real estate for which a WS loan, WS advance, or RCD loan is made must be developed in accordance with NRCS and RUS requirements and approved by RUS. The determination of present market value will be made in accordance with § 1780.44(g) of this chapter.

§ 1781.15 Planning and performing development.

Planning and performing development will be handled in accordance with subpart C of part 1780 of this chapter and guidance from NRCS.

§ 1781.16 [Reserved]

§ 1781.17 Docket preparation and processing.

(a) *Loan dockets.* Dockets for WS loans, WS advances and RCD loans will be prepared in accordance with the applicable provisions of part 1780 of this chapter.

(1) *Time for preparation of docket.* Docket preparation may begin as soon as a preliminary draft of the watershed plan or RCD area plan, together with an estimate of costs and benefits, have been prepared with the assistance of NRCS and approved by the sponsoring local organization applicant. However, the applicant must understand that approval of the WS loan, WS advance, or RCD loan will not be determined until the work plan has been authorized for assistance by NRCS. To the extent practicable, docket preparation may be completed by that time to facilitate the availability of funds when needed.

(2) *Instructions for preparation of docket.* When the Rural Development State Director has determined that plans and other requirements are completed to the extent that preparation of the loan docket may begin, he will send the processing office a memorandum giving complete instructions for docket preparation, with a list of documents to be included in the docket.

(3) *Objectives of the docket.* The docket should include information for use in determining that:

(i) The sponsoring local organization:

(A) Has legal authority to construct and operate the proposed facility, borrow money, give security, incur debt,

and generate revenue needed for operation, maintenance, reserves, debt payment, and other cash requirements.

(B) Is a sponsor or cosponsor of the WS plan or RCD work plan and is otherwise eligible for assistance.

(ii) Funds will be used for authorized purposes.

(iii) The source of income to be pledged for debt payment and the security proposed is adequate.

(iv) Actions required for loan closing are administratively satisfactory, legally sufficient and properly documented in accordance with Agency regulations.

(4) *Assembly of the docket.* The docket will be assembled in accordance with paragraph (a)(2) of this section and will include the following:

(i) A copy of the WS works of improvement agreement or RCD measure agreement.

(ii) A copy of the Operation and Maintenance Agreement between NRCS and the WS or RCD sponsoring local organization for the WS works of improvement or the RCD measure.

(iii) A statement from the NRCS State Conservationist concurring in the feasibility of the WS work of improvement or RCD measure and that NRCS is providing financial and/or technical assistance in accordance with applicable WS or RCD authorities.

(5) *Narrative by processing office.* This should be included in or attached to the Project Summary. It should relate project costs to benefits of the WS or RCD loan or WS advance. Minimum and average individual charges, tax levies or assessments should be given where applicable. Where taxes or assessments on land will be levied, acres should be indicated and average cost per acre should be given. Analyses of income from recreational facilities should be based on the best information available from local, State, and Federal agencies concerned with such recreation facilities. Determination of water rates, schedules, and estimated consumption of water should be made by the same methods as for loans for domestic water and irrigation.

(6) *Estimates of right-of-way Costs.* The docket should include, as part of the Project Summary, current estimated costs of easements, rights-of-way, and

other land rights which must be acquired. The amount estimated for such purposes in the WS or RCD plan should reflect current conditions.

(b) *Loan processing by State Office*—(1) *Review of the docket.* The processing office will check the docket for accuracy and completeness and forward it to the State Office with their recommendations. The Rural Development State Director will review the docket to determine that:

- (i) All documents are accurate and complete.
- (ii) The proposed loan complies with WS and RCD program policies and procedures of both RUS and NRCS.
- (iii) Security is adequate and the repayment plan is sound.
- (iv) Funds requested are for authorized purposes.
- (v) Actions are in compliance with requirements of applicable Federal and State laws.

(2) *Letter of conditions.* When the Rural Development State Director determines that the docket is complete and the proposed activity is feasible, he will prepare a proposed letter of conditions under which the application may be further processed. The letter will be delivered to and discussed with the applicant. Upon acceptance of the conditions the applicant will indicate intentions to meet the conditions by a letter of interest and the application will be further processed.

(3) *Legal review.* The complete docket and proposed letter of conditions will be forwarded to the Regional Attorney, OGC for review and preparation of closing instructions. If it is not possible to issue closing instructions at that time, the Regional Attorney, will issue a preliminary legal opinion commenting upon the applicants legal existence, authority to incur debt and give security for the WS loan, WS advance, or RCD loan requested and actions to be taken before closing instructions may be issued.

(4) *Authorization for approval.* When the Rural Development State Director receives closing instructions or a preliminary legal opinion for a WS loan, WS advance, or RCD loan that is not within his approval authority he will send this information along with the docket, the proposed letter of condi-

tions, and a memorandum recommending approval to the National Office. A copy of his memorandum will be sent to the processing office. If the proposed action is within the Rural Development State Director's approval authority he need not submit the material listed in this paragraph (b)(4) to the National Office unless he wants review and comments before approval.

(c) *WS advance processing.* (1) When the Rural Development State Director has concurred with the NRCS State Conservationist in the inclusion of a WS advance in a watershed plan, preparation of the advance docket can be initiated and will be processed in the same manner as for a WS loan. Where both a WS loan and WS advance are planned only one docket will be prepared to include both the WS loan and WS advance.

(2) If the advance appears to be sound and proper, the Rural Development State Director will send a proposed memorandum of concurrence to the NRCS State Conservationist. The memorandum will state that RUS concurs in the execution of a work of improvement agreement for which NRCS will obligate advance funds and that RUS will accept the proposed obligations of the applicant to repay the advance subject to conditions specified in or attached to the memorandum. These conditions will include all appropriate requirements in accordance with paragraph (b)(2) of this section and will specify compliance with closing instructions issued by the Regional Attorney. It will also indicate that preparation of the WS advance docket will be in accordance with paragraph (a) of this section.

(3) The Rural Development State Director and the NRCS State Conservationist will sign the memorandum of concurrence to NRCS when:

- (i) It has been determined that funds for the advance will be obligated by NRCS; and
- (ii) The WS advance docket, has been approved; and
- (iii) Closing instructions have been issued by the Regional Attorney; and
- (iv) The Rural Development State Director and NRCS State Conservationist have determined that the applicant can comply with all requirements of the

Rural Utilities Service, USDA

§ 1781.20

letter of conditions and closing instructions.

§ 1781.18 Feasibility.

(a) Before WS loan, WS advance, or RCD loan is approved, a determination of feasibility will be made by the Rural Development State Director based upon a review of plans developed in cooperation with NRCS personnel. The feasibility determination must have the concurrence of the NRCS State Conservationist before a WS loan, WS advance, or RCD loan is approved.

(b) A written assessment of the project's feasibility will be made by the processing office, Architect/Engineer, and Program Chief in their recommendations or comments on the Project Summary. These should reflect concurrence of the respective NRCS personnel in counterpart positions with whom they cooperate in administering these programs.

§ 1781.19 Approval, closing, and cancellation.

(a) Approval and closing actions will be taken in accordance with the applicable provisions of part 1780 of this chapter and the following requirements have been met:

(1) The WS or RCD plan has been approved for operations by NRCS and the applicant is an official sponsoring or cosponsoring local organization for the plan as evidenced by being included in the list of sponsoring or co-sponsoring local organizations in the plan.

(2) Closing instructions or a preliminary legal opinion has been prepared by the Regional Attorney.

(3) The governing body of the applicant's sponsoring local organization has formally passed and approved the loan resolution.

(4) The Rural Development State Director and NRCS State Conservationist have determined that all planned actions can be carried out as proposed in the project plan and the docket.

(5) The NRCS State Conservationist and Rural Development State Director have mutually agreed on the priority to be given the WS loan or WS advance, or RCD loan. In making this determination, consideration will be given to the relative priority of the WS works of improvement or RCD meas-

ures to all other such work in the State and the anticipated availability of Federal and local funds to assure continuity of action and work until the project is completed. When funds are to be provided by NRCS for a WS or RCD loan or a WS advance such funds must be obligated by NRCS before closing.

(6) Public bodies will be required to use bond counsel in accordance with subpart D of part 1780 of this chapter.

(b) When favorable action is not taken on a WS loan, WS advance, or RCD loan, the Rural Development State Director will notify the NRCS State Conservationist and the applicant in writing and, if possible, arrange for a meeting of RUS and NRCS representatives with the applicant to explain the action. WS loans, WS advances, or RCD loans may be canceled before closing.

§ 1781.20 Disbursement of WS and RCD loan funds and WS advance funds.

(a) WS and RCD loan funds will be disbursed by the processing office in accordance with the applicable provisions of §1780.45 of this chapter and RUS Bulletin 1781-1, paragraph (5). Funds will be made available to the borrower as needed for payment of development or other costs for which the loan is made. The processing office must determine that the payment is for an authorized purpose and is for benefits accrued to the borrower. This will require evidence from NRCS in accordance with the applicable provisions of RUS Bulletin 1781-1, "Memorandum of Understanding Between RUS and NRCS."

(b) WS advance funds may be disbursed in the same manner as WS loan funds if such funds are transferred to RUS by NRCS for disbursement or they may be disbursed by NRCS. When WS advance funds are disbursed by NRCS, payments from advance of funds will be reported to the Rural Development State Director each month to be reported to the Finance Office and charged to the borrower's account. This action will be taken in accordance with the applicable provisions of RUS Bulletin 1781-1 or RUS Bulletin 1781-2 and agreement between the NRCS